

2019 SENATE FINANCE AND TAXATION

SB 2111

2019 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2111
1/7/2019
30470

- Subcommittee
 Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact sections 14-09-34 and 34-15-04 of the North Dakota Century Code, relating to electronic remittal of funds withheld under an income withholding order and new hire reporting; and to provide for an effective date.

Minutes:

Attachments: 1

Chairman Cook: Opened the hearing on SB 2111.

Jim Fleming: (Refer to Attachment #1). I am the state child support director; I work with the Department of Human Services. It is a little unusual to have a child support bill in front of you but we are glad to talk with you about the concepts in the bill. The bill in front of you would continue the evolution of information exchange between employers and the state. Child support is certainly not the only agency that interacts with employers and shares information and payments; we are one of many. Sometimes we have a little more emotion attached to our cases because of the parents involved and so we try not to be the trailblazer, but we do follow the lead of other state agencies. Interim withholding and new hire reporting are really important for us. This is the bedrock on which we build the program. New hire reporting is our primary source of information regarding where parents are working. When we get that information. We send out an income withholding order and that becomes the primary way that we get collections. Last year we processed 166.9 million dollars in child support. Included in that was already 360,000 electronic payments. We have a full functioning website that was given an award by the Child Support Council for how friendly it was for employers. It is something they already use a lot of. We are reaching a point now where there are few enough paper uses that it is becoming less efficient for us to maintain the paper option. So when Job Service came before the legislature last session, and obtained, the law changed to mandate that all employers, regardless of size, report their payroll to the state and make their payments to the states. We thought the time had come for us to propose a similar approach and that is what is before you. Right now, only large employers in the state are required to report new hires; those that have 25 or more. If they have five or more income withholding orders, they are required to remit the funds electronically. That is the current status of the law. That was what the old job service standard was and then last session they brought it down from just the big ones, to everybody. Just like Job Service, predominantly employers use our website already. As my testimony indicates, in 2018 97.06% of new hire reports were

provided electronically, not just those that were mandated, but everybody. We had over 5,700 new hire reports in paper in 2018 compared to when we started the new hire process it was 87,908. So there is a whole lot less people that are processing these papers than they did when the program started 17 years ago. The number of paper checks have similarly declined, and so this bill would bring the remainder of the employers into that electronic environment. We are sensitive to the mandate for employers. We would have been content to just let the website sell itself, but we are now running into challenges where the scanning technology that we have is no longer maintained on a windows environment that ITD will support. Our vendor says we are done upgrading this software. So we are looking at a fairly expensive procurement to maintain scanning solutions as opposed to saying for the very small number of employers that are not electronic yet, that we just need to go in that direction and hopefully have a lot smaller scale scanning solution for the parents who come in and make their own payment. We get lots of feedback from employers that they find our website easy to use. The award we got was because we have a YouTube video that the employer can select which chapter interests them. If they are just interested in new hire reporting, then they can just click on that chapter which is about 5 minutes long and it gives them what they need to know and how to use the website. It can also play the entire video if they are bored and they want to learn all aspects so that if there may be a new payroll or HR person, they are able to learn. The bill importantly for us, retains the ability we have to waive this requirement. We haven't yet waived it categorically forever, but what we do is grant that waiver if the employer explains why the particular computer system or payroll system maybe needs a little bit more time to meet the needs of the law and so we have granted that in the past. Some of the day labor companies, when the first law was in effect, asked for a waiver for a time and now they are back in the electronics. They were hiring people daily and so until they were able to get animated, that would have been an unusual burden. So we granted that waiver. The law still gives us that ability so we can work with employers. It also has a delayed effective date so if this is passed this session, we can mark the website to those who are not yet in the electronic environment. It is going to be a small enough number where we can really target that just to that audience. Mr. Chairman, we think it really improves our program efficiency. We know it will save us expense in the long run but particularly important is the families will get their money faster if it is electronic. Also, for employers, it isn't easier for them to fudge finger something on a paper remittal. When you go on the website and you enter the name and the person's social security number, if those don't match, the commuter spits an error to that employer. The employer sees where the error is and they fix it. So there is less error for employers and cuts down the risk for them because of the behind the scenes double checks. We really think everybody will win with this bill so we would encourage your support.

Senator Cook: Explain new hire reporting. Is an employer who hires supposed to report that he did this to Human Services?

Jim Fleming: Mr. Chairman, yes that is correct. We are sensitive to the fact that employers are our partners. It is not their obligation. It is their employee's obligations. So we respond to that. We do not brow beat employers coming out of the box. We would reach out to an employer and remind them of the law. We have a packet that we send employers when they first open their doors. At secretary of state, we have a new business packet. We would work with that. How we identify them is that we receive an end of quarter statement from Job Service of North Dakota and we reverse engine that to identify the people that Job Service has received notes about but that we still don't know about. So then we follow up with that

employer and remind them that they have to report new hires. If it gets bad enough, there is a statute about charging a penalty and a fee. We work really hard to make sure that is for those who are deliberately not turning it over. There is a tendency where if you employ your brother-in-law and he owes child supports, the employer might be tempted not to report that person because it would lead to them having money taken out, however, that is very rare. Employers, if they do make that mistake, we respond appropriately. We have two warning letters before we impose a penalty at all so they know it its coming and we work with them from there. It is something that has been in place since '97. It is an example of what the power of technology can be. When that new report is received, it's updated at the state directory of new hires and its updated to the national directory of new hires. It really is efficient and it is an incredibly valuable thing. If you are familiar with how you determine between an employee and an independent contractor, there are these 20 factors you apply. If it is a true employee the new hire reporting kicks in. We are seeing this with Uber and Lyft and some of the new industries. There are more and more transitioning towards independent contractors. We need to look at that and maybe we need to be identifying the type of independent contractors who are providing services just like employees and maybe looking at expanding new hire reporting to pick them up. I have received inquiries from legislators about looking into that to help us collect. State wide, there are about 360 million dollars of unpaid child support. About 250 of it is in cases we are enforcing. So there is a lot of receivables out there we would like to collect. Some of that is not ever going to be collected. We do have the ability to close cases and write off bad debt, but right now, we are carrying about 250 million so we do want to chip away at that. If an employer has a new employee and they withhold from that second employee as well, but when they send us that second check, they copy and paste the last or middle which only has the one. We kick it out the door. That first family now has gotten two payments when only one was meant and the employer is liable for their errors in the remittal. So this double check on the website really helps that issue.

Senator Cook: Any other questions?

Senator Patten: You said there is about 360 million in delinquent child support and 250 are in active collection efforts is that correct?

Jim Fleming: Right. People can privately enforce their child support without using a program. About 75% of child support is open to us and 25% is private only and that is the difference in number. We really can't control the 390 because they are not our cases, but the 250 million that is in our cases, we definitely can control.

Senator Cook: If the person under, received some sort of assistance then you are automatically involved correct?

Jim Fleming: Mr. Chairman that is correct. It can be foster care, Medicaid, or a similar request from another state or maybe the parent is in a different state and they know that parent pays child support in our state. Anybody can apply. If you have someone who just had a baby and is looking to get child support, we are a very economical program. We charge nothing to get our services. We adopt a federal from collections after we get 550 in the course of the year but that fee is only 35 dollars. So we are really a cheap program. If you wanted to hire an attorney to do what we do, during the first five minutes of the call you would surpass what we would charge our fee for about 5 years. So we are very economical and we gladly

take applications from everybody. It doesn't have to be on public assistance to get our help. It is better if we get involved daily because hopefully we prevent the family from needing help from the government because we are getting that child support established and coming in every month.

Senator Dotzenrod: When you look at the bill you can see on line 8 and also down below that on line 11, you overstruck the 24 so this would mean that there is a parallel here to the Job Service. By doing this, does it allow your agency to get services to the kids? Does it also allow you to get some of the work done that you are now doing with employees in your shop to get it done quicker electronically and more hands off? Is there any effect on the number of people in your agency that you need to do the work?

Jim Fleming: No, to that because there is such a volume that is already electronic. We are down to one full time equivalent position to do employer relations. We are going to keep that one anyway because it helps bring your employer attention to this. In terms of the state disbursement unit, we have a couple of folks who spend a fraction of their day processing these paper payments. So we already have shrunk this down. We have to have these business processes and the number of checks keeps getting smaller and smaller and at some point, maintaining the process itself is just not sensible.

Senator Dotzenrod: Following up about employers who hire seasonal help in the spring and in the fall, maybe with agriculture such as grain elevators and farm people where things get really busy so they hire someone for 6 weeks or 8 weeks. Is there a process for which the employer would become aware that that person is an obligor and would know that?

Jim Fleming: There is a process for that. I mentioned that we send a packet to new businesses. That seasonal employer likely employed folks last season and if we didn't get reports from that employer, we would've likely reached out to them. Unless, they are really small and didn't hit our radar. We would've reminded them of the requirement.

Senator Dotzenrod: I farm for a living and we hire people who only help for a month or 6 weeks at a time. You are not sending packets to me are you? My point is that there are a lot of people out there who are hiring people and they are unaware that there are some obligations that fall on their shoulders.

Jim Fleming: We do an awful lot of outreach. I mentioned that we do the reversed engineer with the Job Service file. We will also use that process to identify the employers who have people on payroll at some point in that quarter who have never reported in their life to child support and that is another group that we target with our outreach because they wouldn't know about it. You are an employee yourself so I suspect that you are familiar that there are a lot of agencies besides child support in the state that you will also need to work with such as Workers' Comp., and Job Service. We feel like most employers realize that they need to interact with the government so they start that process and where they go for those resources, leads child support in and we get to be part of that equation. We do not have a perfect compliance rate but we are pretty happy with the rate we have and when we have employers who do not report, we follow up with them and they comply when they realize what they are missing.

Senator Dotzenrod: It seems to me that in a state that has a lot of people who are in business and employing people, that there is a lot that aren't going to get caught through this electronic remittal. It seems like you would have to do a lot of things to be vigilant and to be able to find all these employers that are not going to be involved in this electronic remittal.

Jim Fleming: It's important to remember that the new hire reporting in paper has been required since 1997. There is the format of going electronic and not paper but, employers still would have the requirement to submit new hires on paper. If a parent is paying child support and they hide their employer. When that money comes in, as long as the bill is getting paid on time, we really don't care if it comes from an employer or a parent. If it is getting paid, it is getting paid. If they aren't paying and we don't know of the employer, we are going to be pursuing a suspension of their driver's license. We are going to be looking for bank accounts. We are going to reporting to the Credit Bureau and IRS for offset. We are going to be taking some actions that are going to prompt that person to pay or to reveal where they are working or we are going to have a contempt hearing with the court and question number one out of the box is going to be where they work. So we have a lot of techniques to try and learn that. Important for you to note in this bill, is that we do not look at employers as the enemy. If we did discover one that is not reporting, our goal would be to get them to start reporting and we work with them a lot. It is not the employer's obligation. It is still the parent's obligation. They are still the ones who are liable to pay it, we are just trying to be more efficient in how we approach it. We have really not run into a lot of concerns of problems with the website and the electronics. It works even for the large employers. There wasn't a lot of pushback. They rolled with it. When I visited with Job Service about their bill, I said "Did you guys get any grief from employers?" They said, "Maybe 2 calls when it first was advertised and after that it was a non-issue." So we thought the time was right to suggest to you that this would help us be more efficient. We focus some of that energy into more outreach to employers and overall help employees get money more reliably which is what we are there for.

Senator Cook: Let's say a gentleman and his brother start a concrete company. At what point do they receive this reporting requirement. Is it when they hire their first employee? Is it when they get a notice?

Jim Fleming: The new hire reporting says they have 20 days from the date of the hire to report the new hire and each employee thereafter.

Senator Kannianen: You said Job Service's experience was pretty smooth from last session when they changed it to all employers are required to go electronic? There weren't many glitches?

Jim Fleming: No, if there were kinks, they didn't express it. We think our website is smooth enough that once they know they have to look at it, and do it a few times, it will be fine.

Senator Patten: You are reserving the right to grant exemptions. Do you see that being used even with the older people? Will it be a challenge for them at all?

Jim Fleming: Probably not. It might be a small handful. We are not worried about the state as a large employer or a private industry that is very large because they are their own in house computer systems that generate their payroll. We are more worried about being more

compatible with those big systems because those take time to change. For small employers, they are really not going to be programming a payroll system to do this, they are going to be doing one-offs on the website. So I would expect less from the smaller ones than the big ones. We gave them more time to catch up and they did. If they need a waiver, we would look at it but our goal is to get money. If we are to get that money and we have to say yes to paper for another year, that is a small exchange for getting that money.

Senator Cook: Any other questions? Thank you, Jim. Further testimony in support of 2111. Any testimonies opposed to 2111? Any other testimony at all? Hearing none, we will close the hearing on SB 2111.

Senator Patten: Moved a Do Pass.

Senator Unruh: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Patten will carry the bill.

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2111**

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Patten Seconded By Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Cook	✓		Senator Dotzenrod	✓	
Vice Chairman Kannianen	✓				
Senator Meyer	✓				
Senator Patten	✓				
Senator Unruh	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Patten

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2111: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2111 was placed on the Eleventh order on the calendar.

2019 HOUSE FINANCE AND TAXATION

SB 2111

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2111
2/27/2019
32915

- Subcommittee
 Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to electronic remittal of funds withheld under an income withholding order and new hire reporting.

Minutes:

Attachment 1

Chairman Headland: Opened hearing on SB 2111.

Jim Fleming, Director of the Child Support Division of the Department of Human Services: Distributed written testimony, see attachment 1. Ended testimony at 6:29.

Representative Ertelt: What is the savings you estimate by going all electronic?

Jim Fleming: There is no savings to date because we have the software. That software is no longer being maintained. When we are looking at replacements it's \$200,000. We didn't supply a fiscal note because we're hoping not to engage that \$200,000 and just allow that program to become obsolete.

Chairman Headland: Is there testimony in support? Is there any opposition? Seeing none we will close the hearing.

Representative Dockter: MADE A MOTION FOR A DO PASS

Vice Chairman Grueneich: SECONDED

Representative Ertelt: I'm a little hesitant. It's a mandate by the state that they file and now we're mandating the specific way they would be filing. Without any feedback from those filing paper and whether or not they would be able to do it electronically I'm not going to go with the do pass.

Chairman Headland: If they can show cause they have the ability to show...

Representative Ertelt: I see that provision is in there but we don't know what the agency will consider due cause.

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ROLL CALL VOTE: 10 YES 1 NO 3 ABSENT

MOTION CARRIED

Representative Eidson will carry this bill.

Date: 2-27-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2111**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Dockter Seconded By Rep. Grueneich

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	X		Representative Eidson	X	
Vice Chairman Grueneich	X		Representative Mitskog	A	
Representative Blum	X				
Representative Dockter	X				
Representative Ertelt		X			
Representative Fisher	X				
Representative Hatlestad	X				
Representative Kading	X				
Representative Koppelman	A				
Representative Steiner	X				
Representative Toman	X				
Representative Trottier	A				

Total (Yes) 10 No 1

Absent 3

Floor Assignment Rep. Eidson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2111: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **DO PASS** (10 YEAS, 1 NAYS, 3 ABSENT AND NOT VOTING). SB 2111 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2111

Department of Human Services
Senate Finance and Taxation Committee
Senator Dwight Cook, Chairman

January 7, 2019

Chairman Cook and members of the Finance and Taxation Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Department). I am here today to ask for the Committee's support for Senate Bill 2111.

Senate Bill 2111 addresses two critical components of the child support program: new hire reporting and income withholding. Reporting of new hires is the primary source of information regarding employment of parents who owe child support. Income withholding is the largest source of child support collections.

Senate Bill 2111 continues the evolution of information exchange between employers and the state, including the enactment of similar requirements in 2017 House Bill 1296 for employers who provide information and make payments to Job Service North Dakota.

Although only large employers are currently required to report hires and make payments electronically, nearly all small employers also take advantage of our award-winning website to report new hires. In 2018, 97.06% of new hire reports were provided electronically. Only 5,753 new hire reports were received in paper form in 2018, compared to 87,908 paper reports in 2001. The number of paper checks received from employers has similarly declined over the years. This bill will bring the remainder of our employers into this electronic environment.

Employer feedback on our website indicates that electronic reporting and payment is easy and saves them time. For the Department, the technology for scanning and uploading information on paper reports and payments is not as efficient, and is

becoming obsolete and difficult to maintain in a secure manner. For parents who pay and receive child support, electronic payments by employers is faster, and the website's automatic verification of the information entered by the employer significantly reduces the risk of human error.

Senate Bill 2111 preserves the Department's authority to waive the electronic filing requirement if the employer can show "good cause" for why electronic reporting or payment is not feasible for the employer. The effective date of the bill is delayed until January 1, 2020, to give the Department time to work with employers on the new requirement.

Senate Bill 2111 will improve the efficiency of the Department's child support program, and improve customer service, and we request a "Do Pass" recommendation.

This concludes my testimony, and I am happy to answer any questions you may have.

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Department of Human Services
House Finance and Taxation Committee
Representative Craig Headland, Chairman

February 27, 2019

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Senate Bill 2111 will improve the efficiency of the Department's child support program, and improve customer service, and we request a "Do Pass" recommendation.

This concludes my testimony, and I am happy to answer any questions you may have.